Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-18411 December 17, 1966

MAGDALENA ESTATES, INC., plaintiff-appellee,
vs.
ANTONIO A. RODRIGUEZ and HERMINIA C. RODRIGUEZ, defendants-appellants.

Roxas and Sarmiento for plaintiff-appelle.
Somero, Baclig and Savello for defendants-appellants.

REGALA, *J.:*

Appeal from the decision of the Court of First Instance of Manila ordering the defendants-appellants to pay jointly and severally to the plaintiff-appellee the sum of P655.89, plus legal interest thereon from date of the judicial demand, the sum of P100.00 as attorney's fees, and to pay the costs.

The appellants bought from the appellee a parcel of land in Quezon City known as Lot 7-K-2-G, Psd-26193. In view of an unpaid balance of P5,000.00 on account of the purchase price of the lot, the appellants executed on January 4, 1957, the following promissory note representing the said account:

> PROMISSORY NOTE
>
> P5,000.00
>
> Manila, January 4, 1957
>
> We, the Spouses ANTONIO A. RODRIGUEZ and HERMINIA C. RODRIGUEZ, jointly and severally promise to pay the Magdalena Estates, Inc., or order, at its offices in the City of Manila, without any demand the sum of FIVE THOUSAND PESOS (P5,000.00), Philippine currency, with interest at the rate of Nine Per Cent 9% per annum, within sixty (60) days from January 7, 1957. The sum of P5,000.00 represents the balance of the purchase price of the parcel of land known as Lot 7-K-2-G, Psd. 26193, containing an area of 2,191 square meters, Quezon City.
>
> (Sgd.) Antonio A. Rodriguez
> (T) ANTONIO A. RODRIGUEZ
>
> (Sgd.) Herminia C. Rodriguez
> (T) HERMINIA C. RODRIGUEZ
>
> Signed in the Presence of:
>
> (Sgd.) ILLEGIBLE
>
> (Sgd.) ILLEGIBLE

On the same date, the appellants and the Luzon Surety Co., Inc. executed a bond in favor of the appellee, the undertaking thereof being embodied therein as follows:

> . . . comply with the obligation to pay the amount of P5,000.00 representing balance of the purchase price of a parcel of land known as Lot 7-K-2-G, Psd-26193, with an area of 2191 square meters, Quezon City, covered by Transfer Certificate of Title No. 13 (6947), Quezon City, within a period of sixty (60) days from

> January 7, 1957; That the Surety shall be notified in writing within Ten (10) days from moment of default otherwise, this undertaking is automatically null and void.

On June 20, 1958, when the obligation of the appellants became due and demandable, the Luzon Surety Co., Inc. paid to the appellee the sum of P5,000.00. Subsequently, the appellee demanded from the appellants the payment of P655.89 corresponding to the alleged accumulated interests on the principal of P5,000.00. Due to the refusal of the appellants to pay the said interest, the appellee started this suit in the Municipal Court of Manila to enforce the collection thereof. The said court, on February 5, 1959, rendered judgment in favor of the appellee and against the appellants, ordering the latter to pay jointly and severally the appellee the sum of P655.89 with interest thereon at the legal rate from November 10, 1958, the date of the filing of the complaint, until the whole amount is fully paid. Not satisfied with that judgment, appellants appealed to the Court of First Instance of Manila, where the case was submitted for decision on the pleadings. The Court of First Instance of Manila rendered the judgment stated at the outset of this decision.

On appeal directly to this Court, the following errors are assigned:

> I. The lower court erred in concluding as a fact from the pleadings that the plaintiff-appellee demanded, and the Luzon Surety Co., Inc. refused, the payment of interest in the amount of P655.89, and in not finding and declaring that said plaintiff-appellee waived or condoned the said interests.
>
> II. The lower court erred in not finding and declaring that the obligation of the defendants-appellants in favor of the plaintiff-appellee was totally extinguished by payment and/or condonation.
>
> III. The lower court erred in not finding and declaring that the promissory note executed by the defendants-appellants in favor of the plaintiff-appellee was, insofar as the said document provided for the payment of interests, novated when the plaintiff-appellee unqualifiedly accepted the surety bond which merely guaranteed payment of the principal in the sum of P5,000.00.

Appellants claim that the pleadings do not show that there was demand made by the appellee for the payment of accrued interest and what could be deduced therefrom was merely that the appellee demanded from the Luzon Surety Co., Inc., in the capacity of the latter as surety, the payment of the obligation of the appellants, and said appellee accepted unqualifiedly the amount of P5,000.00 as performance by the obligor and/or obligors of the obligation in its favor. It is further claimed that the unqualified acceptance of payment made by the Luzon Surety Co., Inc. of P5,000.00 or only the amount of the principal obligation and without exercising its (appellee's) right to apply a portion of P655.89 thereof to the payment of the alleged interest due despite its presumed knowledge of its right to do so, the appellee showed that it waived or condoned the interests due, because Articles 1235 and 1253 of the Civil Code provide:

> ART. 1235. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with.
>
> ART. 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been recovered.

We do not agree with the contention of the appellants. It is very clear in the promissory note that the principal obligation is the balance of the purchase price of the parcel of land known as Lot 7-K-2-G, Psd-26193, which is the sum of P5,000.00, and in the surety bond, the Luzon Surety Co., Inc. undertook "to *pay the amount of P5,000.00 representing balance of the purchase price of a parcel of land known as Lot 7-K-2-G, Psd-26193*, ..." The appellee did not protest nor object when it accepted the payment of P5,000.00 because it knew that that was the complete amount undertaken by the surety as appearing in the contract. The liability of a surety is not extended, by implication, beyond the terms of his contract.[1] It is for the same reason that the appellee cannot apply a part of the P5,000.00 as payment for the accrued interest. Appellants are relying on Article 1253 of the Civil Code, but the rules contained in Articles 1252 to 1254 of the Civil Code apply to a person owing several debts of the same kind of a single creditor. They cannot be made applicable to a person whose obligation as a mere surety is both contingent and singular; his liability is confined to such obligation, and he is entitled to have all payments made applied exclusively to said application and to no other.[2] Besides, Article 1253 of the Civil Code is merely directory, and not mandatory.[3] Inasmuch as the appellee cannot protest for non-payment of the interest when it accepted the amount of P5,000.00 from the Luzon Surety Co., Inc., nor apply a part of that amount as payment for the interest, we cannot now say that there was a waiver or condonation on the interest due.

It is claimed that there was a novation and/or modification of the obligation of the appellants in favor of the appellee because the appellee accepted without reservation the subsequent agreement set forth in the surety bond despite its failure to provide that it also guaranteed payment of accruing interest.

The rule is settled that novation by presumption has never been favored. To be sustained, it needs to be established that the old and new contracts are incompatible in all points, or that the will to novate appears by

express agreement of the parties or in acts of similar import.[4]

An obligation to pay a sum of money is not novated, in a new instrument wherein the old is ratified, by changing only the terms of payment and adding other obligations not incompatible with the old one,[5] or wherein the old contract is merely supplemented by the new one.[6] The mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, when there is no agreement that the first debtor shall be released from responsibility does not constitute a novation, and the creditor can still enforce the obligation against the original debtor. (Straight v. Haskel, 49 Phil. 614; Pacific Commercial Co. v. Sotto, 34 Phil. 237; Estate of Mota v. Serra, 47 Phil. 464; Duñgo v. Lopena*, supra*). In the instant case, the surety bond is not a new and separate contract but an accessory of the promissory note.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed, with costs against the appellants.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Castro, JJ., concur.

Footnotes

[1] La Insular v. Machuaca Go Tauco, 39 Phil. 567.

[2] Socony-Vacuum Corp. v. Miraflores, 67 Phil. 304.

[3] Baltazar v. Lingayen Gulf Electric Co., Inc., G.R. Nos. L-16236-38, June 30, 1965.

[4] Martinez v. Cavives, 25 Phil. 581; Tiu Sinco v. Havana, 45 Phil. 417; Asia Banking Corporation v. Lacson, 48 Phil. 482; Pascual v. Lacsamana, 53 O.G. 2467; Duñgo v. Lopena, et al., G.R. No. L-18377, Dec. 29, 1962.

[5] Inchausti v. Yulo, 34 Phil. 978; Pablo v. Sapungan, 71 Phil. 145.

[6] Ramos v. Gibbon, 67 Phil. 371; Duñgo v. Lopena, *supra*.

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